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USA, Inc., and HiSilicon Technologies Co. Ltd.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

HUAWEI TECHNOLOGIES CO., LTD.,
HUAWEI DEVICE USA, INC., and
HUAWEI TECHNOLOGIES USA, INC.,

Plaintiffs / Counterclaim-Defendants,

v.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC.,

Defendants / Counterclaim-Plaintiffs,

and

SAMSUNG RESEARCH AMERICA,

Defendant,

v.

HISILICON TECHNOLOGIES CO., LTD.,

Counterclaim-Defendant.

Case No. 16-cv-02787-WHO

**DECLARATION OF BIN WANG IN
SUPPORT OF HUAWEI'S OPPOSITION
TO SAMSUNG'S MOTION TO ENJOIN
HUAWEI FROM ENFORCING THE
INJUNCTION ISSUED BY THE
INTERMEDIATE PEOPLE'S COURT OF
SHENZHEN**

1 I, Bin Wang, declare as follows:

2 1. I am a Senior Legal Counsel of the IP Litigation Department at Huawei Technologies
3 Co., Ltd. I have worked on the litigation between Huawei and its affiliates (collectively
4 “Huawei”) and Samsung Electronics Co., Ltd. and its affiliates (collectively “Samsung”). I have
5 personal knowledge of the matters set forth in this declaration.
6

7 2. There are a total of 42 patent infringement suits and 1 rate-setting and royalty
8 payment suit between Huawei and Samsung in China, including 27 standard-essential patent
9 (“SEP”) infringement suits and 15 non-standard-essential patent (“NSEP”) infringement suits.
10 Each patent infringement suit only includes one patent in China, therefore 42 patent infringement
11 suits correspond to 42 patents.

12 3. Huawei first filed 8 SEP infringement suits and 2 NSEP infringement suits in the
13 Shenzhen Intermediate People’s Court (“Shenzhen Court”) on May 25, 2016 and May 27, 2016,
14 1 NSEP infringement suit in the Guangzhou Intellectual Property Court (“Guangzhou Court”) on
15 May 25, 2016, and 1 NSEP infringement suit in the Quanzhou Intermediate People’s Court
16 (“Quanzhou Court”) on June 29, 2016. In response to the infringement suits filed by Huawei,
17 Samsung filed 8 SEP infringement suits and 2 NSEP infringement suits in the Shenzhen Court
18 on July 8, 2016, 1 NSEP infringement suit in the Guangzhou Court on July 12, 2016, and 1
19 NSEP infringement suit in the Quanzhou Court on August 8, 2016. In these infringement suits,
20 Huawei and Samsung requested the same remedies from the courts. More specifically, in the
21 SEP infringement suits, Samsung also requested the Shenzhen Court enjoin Huawei’s alleged
22 infringement, and did not seek damages.
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24 4. Samsung first filed 4 SEP infringement suits and 2 NSEP infringement suits in the
25 Beijing Intellectual Property Court (“Beijing Court”) on July 8, 2016, and 2 SEP infringement
26 suits and 2 NSEP infringement suits in the Xi’an Intermediate People’s Court (“Xi’an Court”) on
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July 8, 2016. In response to the infringement suits filed by Samsung, Huawei filed 5 SEP infringement suits and 1 NSEP infringement suit in the Beijing Court on September 8, 2016, and 2 NSEP infringement suits in the Xi'an Court on October 28, 2016. In these infringement suits, Huawei and Samsung requested same remedies from the courts. In those SEP infringement suits, Samsung requested the Beijing Court and Xi'an Court enjoin Huawei's alleged infringement, and did not seek damages.

5. The table below summarizes the infringements suits between Huawei and Samsung in five courts.

	Huawei's suits against Samsung: 20		Samsung's suits against Huawei: 22	
	SEP: 13	NSEP: 7	SEP: 14	NSEP: 8
Shenzhen Court	8	2	8	2
Beijing Court	5	1	4	2
Xi'an Court	0	2	2	2
Quanzhou Court	0	1	0	1
Guangzhou Court	0	1	0	1

6. In parallel with the patent infringement proceedings before the courts, all 42 patents also underwent invalidation procedures at the Patent Reexamination Board ("PRB") of China's State Intellectual Property Office. The table below summarizes the result of the invalidation procedures at the PRB, and shows that the rate of invalidation of Samsung's Chinese patents was much higher than Huawei's.

		Numbers of Patents in Suit	Maintained (incl. partial maintenance)	Invalidated All Claims	Ratio of Patent Invalidation
Huawei Patents	SEP	13	12	1	8%
	Non-SEP	7	3	4	57%
Samsung Patents	SEP	14	9	5	36%
	Non-SEP	8	0	8	100%

7. According to Chinese civil procedure, a patent that is invalidated on all claims as decided by the PRB needs to be withdrawn from court or dismissed by court. To date, 17 of the 18 infringement suits related to invalid patents have been withdrawn or dismissed; only 1 NSEP

infringement suit filed by Samsung before the Quanzhou Court has not yet been withdrawn or dismissed. During the lawsuit proceedings, Samsung also voluntarily withdrew 2 SEP infringement suits in the Shenzhen Court and 1 SEP infringement suit in the Beijing Court due to issues related to a 3G pass-through license from Qualcomm.

8. The table below summarizes the remaining infringements suits between Huawei and Samsung in five courts as of now.

	Huawei Remaining Infringement Suits: 15		Samsung Remaining Infringement Suits: 8	
	SEP: 12	NSEP: 3	SEP: 7	NSEP: 1
Shenzhen Court	7	0	3	0
Beijing Court	5	0	2	0
Xi'an Court	0	1	2	0
Quanzhou Court	0	1	0	1 (Patent is invalidated, but Samsung has not yet withdrawn)
Guangzhou Court	0	1	0	0

9. To date, there have been substantial developments in the remaining infringement suits. In the NSEP infringement suit filed by Huawei in the Quanzhou Court, Huawei has won the second instance decision that the patent is infringed by Samsung's Chinese affiliates. Additionally, in 2 of the remaining 7 SEP infringement suits filed by Huawei in the Shenzhen Court, Huawei has won the first instance decision that the patents are infringed by Samsung's Chinese affiliates, and Samsung has appealed the decisions to the Guangdong High People's Court. In 2 of the 3 SEP infringement suits filed by Samsung in the Shenzhen Court, 12-day trials in June and July of 2017 have been held, and the Shenzhen Court has noticed the parties to participate in a further continuation of the trial from February 27-28, 2018; the parties are currently awaiting first instance decisions in these two suits. In the other 5 SEP infringement suits filed by Huawei and the remaining SEP infringement suit filed by Samsung in the Shenzhen Court, the parties have exchanged evidence, but have not yet had a hearing. The Beijing Court

1 has arranged for the parties to exchange evidence for all 7 remaining SEP suits brought before
2 that court and written opinions for evidence of SEP infringement suits filed by Samsung;
3 evidence exchange has been completed for 6 of the 7 SEP suits, and will be completed on the
4 remaining SEP suit on March 12, 2018 according to the Beijing Court's schedule. The Xi'an
5 Court has arranged the parties to exchange evidence for all 3 remaining suits brought before that
6 court and has scheduled to hold a hearing for the NSEP infringement suit filed by Huawei.

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8 10. In the two SEP cases brought by Huawei and decided by the Shenzhen Court to date,
9 the Court held a total of 18 days of trial to address both FRAND issues and technical issues.
10 Trial on the FRAND issues was held on December 19-22, 2016 and January 12-13, 2017. The
11 technical portion of the trial was held on December 23, 2016, January 5-6, 2017, January 9-11,
12 2017, February 4, 2017, and February 6-10, 2017. During June and July of 2017, the same Court
13 held 12-day trials to address both FRAND issues and technical issues for 2 of the SEP
14 infringement actions Samsung brought against Huawei.

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16 11. During the trials of all of the SEP infringement suits held to date, the agents
17 representing the parties were provided with full opportunities to express their opinions and
18 argument, and could provide written submissions during or after the trials. [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 12. [REDACTED]
25 [REDACTED]

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27 ¹ I note that Samsung has submitted only the translation of the Shenzhen Court's decision in case number 840 with its
28 current motion, but in fact seeks to prevent enforcement of the injunctive relief Huawei obtained in case numbers 840
and 816. The FRAND issues contemplated, evidence and expert opinion presented, and Court's decision were
substantively the same in both the 840 and 816 cases.

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[REDACTED]	[REDACTED]
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Huawei Evidence Group	Summary of Evidence Presented
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]

1 15. In deciding Huawei's SEP infringement allegations against Samsung, the Shenzhen
2 Court considered two issues: (1) whether the parties had complied with their FRAND obligations
3 (including by assessing the negotiation history, patent strengths, and judging whether the parties
4 offers—sometimes translated as “quotations”—complied with FRAND principles), and (2)
5 technical issues regarding whether Samsung infringed Huawei's asserted patent. *See* 840
6 Decision at 177.

7 16. Upon evaluation of the evidence and arguments presented by both parties, the Court's
8 ultimate finding , set forth in pages 176-209 of the decision, were as follows:
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- 10 • [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 ○ [REDACTED]
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17. Based on the above findings made by the Shenzhen Court, the Court concluded as follows (840 Decision at 209):

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18. As can be seen from the above findings and conclusion, the Shenzhen Court was presented with evidence of the parties' global patent license negotiations, the relative strength of

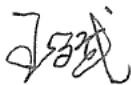
1 the parties' global SEP portfolios, and the parties' global SEP licensing offers. The Court's
2 findings with respect to FRAND issues were not restricted to the asserted patents or the parties'
3 China SEP portfolios.

4 19. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
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9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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[REDACTED]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on February 14, 2018 in Shenzhen.



Bin Wang